

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

FRANK KENNETH MILLER, JR.,

Plaintiff,

v.

Civil Action No: 2:18-cv-00269

**COBRA ENTERPRISES OF UTAH, INC.
d/b/a Cobra Firearms, a Utah corporation; and
RK HOLDINGS LLP d/b/a RURAL KING
HOLDINGS LLP, an Illinois limited
liability partnership authorized to do
business in the State of West Virginia**

Defendants and Third-Party Plaintiff.

v.

KODIAK INDUSTRIES, INC., a Utah corporation,

Third-Party Defendant.

**DEFENDANT RURAL KING'S
THIRD-PARTY COMPLAINT AGAINST KODIAK INDUSTRIES, INC.**

NOW COMES Defendant and Third-Party Plaintiff RK Holdings LLP d/b/a Cross Lanes Rural King, formerly incorrectly named as Rural King Holdings, LLP ("Rural King"), by counsel, pursuant to Rule 14 of the Federal Rules of Civil Procedure, and for its Third-Party Complaint against Kodiak Industries, Inc. ("Kodiak") alleges as follows:

PARTIES

1. Rural King is a foreign limited liability partnership formed in the State of Illinois, qualified to do business in West Virginia, and with its principal place of business located in Mattoon, Illinois.

2. Upon information and belief, Plaintiff Frank Kenneth Miller, Jr. is a resident and citizen of Boone County, West Virginia.

3. Defendant Cobra Enterprises of Utah d/b/a Cobra Firearms (“Cobra”) is a Utah corporation with its principal place of business located in Salt Lake City, Utah. Upon information and belief, at all times relative to Plaintiff’s Amended Complaint, Cobra was in the business of designing, manufacturing, marketing, and packaging firearms, including but not limited to the .38 caliber Cobra Derringer (Model CB38SB, Serial #CT1889445) at issue in Plaintiff’s Amended Complaint (the “subject firearm”).

4. Third-Party Defendant Kodiak is a Utah corporation with its principal place of business located in Salt Lake City, Utah.

5. Upon information and belief, at all times relevant to Plaintiff’s Amended Complaint, Kodiak was a wholesale distributor of firearms designed and manufactured by Cobra, and Kodiak was in the business of packaging, shipping selling, servicing, and/or distributing firearms designed and manufactured by Cobra, including but not limited to the subject firearm, throughout the United States, including but not limited to West Virginia.

FACTUAL BACKGROUND

6. Defendant Cobra designed, manufactured, and packaged the subject firearm and placed it into the stream of commerce.

7. Upon information and belief, Kodiak acquired the subject firearm and distributed the subject firearm as part of the chain of distribution.

8. Upon information and belief, Rural King purchased the subject firearm from Kodiak on or about August 12, 2016.

9. On February 6, 2018, Plaintiff Frank Kenneth Miller, Jr. commenced the instant Civil Action against Rural King and Cobra.

10. Plaintiff's claims against Rural King were dismissed, without prejudice, on June 22, 2018.

11. On January 29, 2019, Plaintiff filed his Amended Complaint and reasserted his claims against Rural King and Cobra.

12. Plaintiff's Amended Complaint alleges that on or about November 3, 2016, Plaintiff purchased the subject firearm from the Rural King retail store located in Cross Lanes, West Virginia.

13. Plaintiff's Amended Complaint alleges that on June 25, 2017, the subject firearm inadvertently discharged and caused Plaintiff to sustain severe bodily injuries.

14. Plaintiff's Amended Complaint alleges that the subject firearm was designed, manufactured, and marketed in a defective condition, and that such defects resulted in the inadvertent discharge and were the proximate cause of Plaintiff's injuries.

15. Plaintiff's Amended Complaint alleges that subject firearm was not accompanied by adequate warnings, and that the subject firearm was rendered not reasonably safe because adequate warnings about the hazards with operating and/or using the subject firearm were not provided to consumers.

16. Rural King answered Plaintiff's Amended Complaint on February 28, 2019, denying all claims asserted against it. Contemporaneous with the filing of its Answer, Rural King asserted a Cross-Claim against Defendant Cobra seeking indemnity and contribution from Defendant Cobra.

17. In its Cross-Claim against Defendant Cobra, Rural King asserted that Plaintiff's alleged damages, if any, were the proximate result of the acts and/or omissions of Cobra. Cobra was responsible for the design, manufacture, assembly, and distribution of the subject firearm, for ensuring that the firearm contained adequate warnings, and for placing the subject firearm into the stream of commerce.

18. As the distributor of the subject firearm and a party in the chain of distribution, Kodiak is liable for the injuries set forth in Plaintiff's Amended Complaint.

COUNT I – IMPLIED INDEMNITY AGAINST KODIAK

19. Rural King incorporates, as if fully set forth herein, the allegations contained in Paragraphs 1 through 18 of its Third-Party Complaint.

20. Rural King asserts that it is without fault or liability in this action, as it relied on Kodiak to package and/or distribute the subject firearm in a non-defective manner that is reasonably safe and fit for its intended purpose.

21. Rural King also relied on Cobra and Kodiak to provide adequate warnings and instructions regarding the subject firearm that would be passed on to end consumers, including Plaintiff.

22. Accordingly, Rural King is entitled to indemnification from Kodiak.

COUNT II – CONTRIBUTION AGAINST KODIAK

23. Rural King incorporates, as if fully set forth herein, the allegations contained in Paragraphs 1 through 22 of its Third-Party Complaint.

24. Rural King asserts that it is without fault or liability in this action and that Plaintiff's alleged damages, if any, were caused by Cobra and/or Kodiak, rather than Rural King.

25. Further, if Plaintiff's allegations are true regarding the subject firearm, then Plaintiff's damages, if any, were caused by Cobra and/or Kodiak, rather than Rural King.

26. Accordingly, Rural King is entitled to contribution from Kodiak.

WHEREFORE, in the event that Rural King is determined to be liable to Plaintiff for the claims asserted in this action, Rural King demands that it receive judgment for contribution and/or indemnity over and against Third-Party Defendant Kodiak Industries, Inc. in an amount sufficient to compensate Rural King for its damages and that Rural King further be awarded attorney's fees and other such damages as this court may deem just and proper.

RURAL KING REQUESTS A TRIAL BY JURY.

**RURAL KING,
By Counsel**

/s/ Jason A. Proctor
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Defendants.

CERTIFICATE OF SERVICE

I, Jason A. Proctor, do hereby certify that on the 13th day of June, 2019, I electronically filed the foregoing **Defendant Rural King's Third-Party Complaint Against Kodiak Industries, Inc.** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants:

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